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ADVANCED LEGAL RESEARCH, ANALYSIS AND WRITING (307HF), 2001-2002

MATERIALS - VOLUME I

Wendy Bellack-Viner

**Faculty of Law
University of Toronto**

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1. References on Liability for Inadequate Research
2. B. Cotton, "Basic Legal Research: How to Gather Raw Research Material" (1993) 15 Advocates' Quarterly 332
3. N.A. Pantaloni, L.J. Sirico and E.M. Callinan, "Legal Research and the Summer Job . . . Advice from the Law School . . . Advice from the Law Firm" (1999) 7 Perspectives 110
4. J. M. Jacobstein *et al.*, Fundamentals of Legal Research, 7th ed., 1998, pp. 15-21
5. American Bar Association, Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the the Profession: Narrowing the Gap, "Fundamental Lawyering Skills - s. 3 Legal Research", as reproduced in Jacobstein, *supra.*, Appendix F, pp. 772-776
6. *Gibb v. Jiwan*, unreported, [1996] O.J. No. 1370 (O.C. G.D.), pp. 1-2, 9-15
7. B. Cotton, "Advanced Legal Research and Writing: How to Build a Cadillac" (1991) 13 Advocates' Quarterly 232
8. R. Wydick, Plain English for Lawyers, 4th ed., (1998) (Durham, N.C.: Carolina Academic Press), pp. vii-viii
9. T.A. Cromwell (ed.), Preparation of Factums, (Aurora: Canada Law Book, 1996), pp. 24-32
10. M.F. Fitzgerald, Legal Problem Solving: Reasoning, Research and Writing, 2d ed., (Toronto: Butterworths, 2001), pp. 241-248)
11. Excerpts from Factum of the Applicant, Greater Toronto Airports Authority, in *Greater Toronto Airports Authority v. The Corporation of the City of Mississauga* (O.C. G.D.)
12. Excerpts from Factum of the Respondent, The Corporation of the City of Mississauga, in *Greater Toronto Airports Authority v. The Corporation of the City of Mississauga* (O.C. G.D.)

13. List of Supplementary Reference Materials
14. Sources for Legal Research on the Web

References on Liability for Inadequate Research

Some secondary materials which address a lawyer's liability for inadequate research are:

L.D. MacLachlan, "Gandy Dancers on the Web: How the Internet Has Raised the Bar on Lawyers' Professional Responsibility to Research and Know the Law" (2000) 13 Geo. J. Legal Ethics 607

M.J. Newman, "Attorney Research Malpractice" (1991) 32 Law Office Economics and Management 85

T. Tjaden, "Legal Research Malpractice and Research Adequacy", Chapter 10 in *Legal Research and Writing* (Toronto: Irwin Law Inc., 2001)

M. Whiteman, "The Impact of the Internet and Other Electronic Sources on an Attorney's Duty of Competence under the Rules of Professional Conduct" (2000), 11 Alb. L.J. Sci. & Tech. 89

Relevant American cases are referenced in all of the above sources and Canadian cases are also noted in Ted Tjaden's *Legal Research and Writing* book. Other Canadian cases on this point are:

Beals v. Saldanha (1998), 42 O.R. (3d) 127 (O.C.(G.D.)), supp. reasons at [1999] O.J. No. 43, app. allowed in part on other grounds [2001] O.J. No. 2586 (C.A.) (This is an important case on the risk of reliance on outdated information. The lawyer consulted the Canadian Encyclopaedic Digest in his office and provided advice to the clients based on that research. At the clients' request, he said that he would speak to another lawyer about the matter. He went to the County Law Library to see if he could find a relevant text and could not do so. He discussed the problem over lunch with a colleague who confirmed the lawyer's original advice. The lawyer did not check with an American lawyer (the matter involved an American judgment against the clients), nor did he advise the clients to do so. The lawyer undertook no further research and reiterated his original advice.

The lawyer was unaware of a Supreme Court of Canada decision which had been rendered almost a year prior to his retainer. The decision signified a major change in the relevant law on which the lawyer had opined. Although the Supreme Court decision itself would not have changed the advice, lower court decisions subsequent to it had extended it in ways that were relevant to the advice provided in this case.

The court held that the solicitor had "... failed his clients and acted in a manner that was less than that of a competent solicitor" (at 148 O.R.) in failing to advise them of the significant risk arising as a result of the Supreme Court decision. However, as the main action in this case was dismissed, the third party claim against the solicitor was also dismissed. Nonetheless, the third party claim was dismissed without costs.

Gibb v. Jiwan, unreported, [1996] O.J. No. 1370 (O.C.(G.D.)) (see in these course materials)

Lougheed Enterprises Ltd. v. Armbruster (1992), 63 B.C.L.R. (2d) 316 (The lawyer did not bring to the court's attention a reported case that was binding on the court; the court here discusses a lawyer's duty to bring relevant law to the attention of the court)

Occidental Chemical Corp. v. Sovereign General Insurance Co., [2000] O.J. No. 4557 (Ont. S.C.J.) (This case addresses a lawyer's responsibility to advise of the risks of changes in the law. In an opinion letter to an insurer client, the law firm identified a relevant B.C. Court of Appeal decision which was on appeal to the Supreme Court of Canada that, depending on the higher court's disposition of it, could alter the law on the point. The Supreme Court's decision did, ultimately, change the relevant law.

The insurer later claimed that its decision not to defend an action was based on the law firm's negligent advice. In rejecting the insurer's claim, the court stated (at p. 38 O.J.): "That was the law at the time. The risk that the law might change was researched, recognized and reported in the succinct manner customary with this client. [The lawyers] performed their duty to the client, within a reasonable standard of care."

For an article on liability for ineffective legal writing, see:

W.B. Davis, "Writing Clinic - An Attorney's Ethical Obligations Include Clear Writing" (2000), 72 N.Y. St. B.J. 50

Sources for Legal Research on the Web

The sources for legal research on the Web are constantly increasing and changing. The reliability of web sites may change significantly over time and the currency of information on different web sites varies greatly. Generally, Internet sources are presently more complete and reliable for legislative research than for case law research. There are numerous lists of sources but they tend to be repetitive and cross-reference each other. A few key sources are:

Bora Laskin Law Library Legal Resources Link - <http://www.law-lib.utoronto.ca/resources/index.htm>

provides links to sites for Canadian and foreign law research

T. Tjaden, *Legal Research and Writing*, (Toronto: Irwin Law Inc., 2001), Chapter 5 - "Legal Research on the Internet"

provides comprehensive lists of various types of sources

Law Library Resource Xchange - <http://www.llrx.com> -

T. Tjaden, "Doing Legal Research in Canada (llrx.com/features/ca_sec.htm)

L. Tsang, "Update to Overview of Sources of Canadian Law on the Web"

(llrx.com/features/canadian2.htm)

